

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-3887

John Kellensworth,

Appellant,

v.

Larry Norris, Director, Arkansas
Department of Correction; M. D. Reed,
Warden, Arkansas Department of
Correction; Gaylon Lay, Assistant
Warden, Arkansas Department of
Correction; Bill Terry, Control/
Movement Sgt., Cummins Unit,
Arkansas Department of Correction;
D. W. Tate, Captain/Admin, Arkansas
Department of Correction,

Appellees.

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On Appeal from the United States
District Court for the
Eastern District of Arkansas.

[Not to be published]

Submitted: May 23, 2000

Filed: June 14, 2000

Before RICHARD S. ARNOLD, BOWMAN, and BEAM, Circuit Judges.

PER CURIAM.

John Kellensworth, an Arkansas inmate, appeals the District Court's¹ 28 U.S.C. § 1915A dismissal of his 42 U.S.C. § 1983 suit against several Arkansas Department of Correction (ADC) officials. Kellensworth alleged that ADC's practice of randomly double-celling inmates in administrative segregation--resulting in his temporary placement with an inmate whom Kellensworth feared, which caused him to suffer mental anguish--constituted deliberate indifference. Before he filed the complaint, Kellensworth was released from administrative segregation. The District Court dismissed the complaint as one that was not cognizable under 42 U.S.C. § 1997e(e) (no federal civil action may be brought by prisoner for mental or emotional injury without prior showing of physical injury). After this appeal was filed, we appointed counsel for Kellensworth and invited appellees to file a brief. The matter has now been fully briefed, and--after considering the record and the parties' arguments--we conclude that the District Court's dismissal was proper. Accordingly, we affirm.

Considered as an action for damages, the complaint is barred by 42 U.S.C. §1997e(e). No allegation of physical injury is made, nor has plaintiff suggested that he suffered any actual physical injury. The complaint also requests injunctive relief. Even if such relief is not barred by §1997e(e), a question we need not now decide, dismissal of the instant complaint was proper. The plaintiff is no longer in administrative segregation, and therefore lacks standing to complain of random double-celling unless he can show that he is in substantial and immediate danger of being double-celled again. See, e.g., O'Shea v. Littleton, 414 U.S. 488, 495-96, 502 (1974). No such showing has been made here.

Also pending before us is Kellensworth's pro se filing entitled "Amendment to Correct Defective Pleading," which we construe as a motion to amend his trial-court pleadings, and deny.

¹The Honorable Elsjane Trimble Roy, United States District Judge for the Eastern and Western Districts of Arkansas, now retired.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.